Supreme Court, U.S.
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No. 98-1049

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

LINDA ALLINDER,

Petitioner,

v.

INTER-CITY PRODUCTS CORPORATION (USA)
AND
ROBERT HENNINGSEN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Petitioner may properly challenge, at this stage of her case, the lower courts' conclusions that Respondent Inter-City Products Corporation (USA)'s long-term disability insurance policy constitutes a "welfare benefit plan" and that Respondents constitute "fiduciaries" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and, if so, whether the lower courts were correct, based on the record before them, in so concluding.

2. Whether Petitioner may properly assert that her claims under ERISA, which both the District Court and Court of Appeals addressed on the merits and which the Court of Appeals held constituted "a cognizable . . . interpretation" of the statute, were instead so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise devoid of merit as to deprive the lower courts of jurisdiction over the matter.

3. Whether the Court of Appeals correctly concluded that Petitioner's claims under ERISA Section 502(a)(3) were subject to this Court's holding in *Mertens v. Hewitt Assocs.*, 508 U.S. 248 (1993), limiting potential remedies under Section 502(a)(3) to "appropriate equitable relief," which excludes money damages such as compensatory and punitive damages.

4. Whether Petitioner may seek, at this stage of her case and on the record developed below, relief that was not ruled upon by the lower courts, and, if so, whether she may appropriately characterize money damages for fees paid her attorney and interest associated with her receipt of benefits as equitable "restitution" in light of this Court's decisions and settled principles of law to the contrary.

RULE 29.6 STATEMENT OF AFFILIATED CORPORATIONS

Respondent Inter-City Products Corporation (USA), now known as International Comfort Products Corporation (USA), is a wholly-owned subsidiary of International Comfort Products Corporation. Respondent Inter-City Products Corporation (USA) holds an interest in its non-wholly-owned subsidiary, Frigoram Commerciale S.p.A.

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The opinion of the United States Court of Appeals for the Sixth Circuit in this case, *Allinder v. Inter-City Products Corp. (USA)*, 152 F.3d 544 (6th Cir. 1998), was reproduced as "Appendix A" to the Petition for Writ of Certiorari at A1. The unreported order of the Court of Appeals denying rehearing was reproduced as "Appendix B" to the Petition for Writ of Certiorari at A20. The unreported opinion of the United States District Court for the Middle District of Tennessee in this case is reproduced verbatim as "Appendix A" hereto at A1, and the unreported opinion of the District Court in Petitioner's prior related action is reproduced verbatim at A9.

STATEMENT OF THE CASE

Petitioner's claims arise from her efforts to secure benefits under an insured, group long-term disability ("LTD") plan maintained by Respondent Inter-City Products Corporation (USA) ("Inter-City") for the benefit of its employees. After Petitioner's initial effort to claim LTD benefits was denied by Inter-City, she abandoned the established claim review process and instead attempted to deal directly with the insurance company with whom Inter-City contracted for group benefits. Although Petitioner ultimately recovered the full value of her LTD benefits, she thereafter sued Inter-City asserting that it had breached various duties to her by initially denying her claim.

In her Petition for Writ of Certiorari ("Petition"), as in her pleadings below, Petitioner confuses the procedural history of this case with an earlier, failed lawsuit against Inter-City. As described by the Court of Appeals, Petitioner initially filed suit against Inter-City in Tennessee state court seeking compensatory and punitive damages under a variety of state law theories. *See* Petitioner's Appendix ("Pet. App.") at A7. Because Petitioner's claims in this initial suit related directly to Inter-City's employee group LTD plan, Inter-City properly and timely removed Petitioner's initial suit to the District Court on the grounds that the Employee Retirement Income Security Act of 1974, as amended,

29 U.S.C §§ 1001 - 1461 ("ERISA") preempted her state law claims and provided the exclusive source of any remedy to which she might have been entitled. Thereafter, the District Court denied Petitioner's request that the case be remanded and granted Inter-City's motion for summary judgment on ERISA preemption grounds, dismissing Petitioner's case without prejudice to the refiling of claims she may have had under ERISA. Pet. App. at A7; Respondents' Appendix ("Resp. App.") at A1-2, A13. Petitioner did not appeal or otherwise challenge the District Court's final judgment in this initial action, and the time for doing so has since run.

Rather than further pursuing her state-law claims, Petitioner filed the instant case in the District Court under ERISA seeking compensatory and punitive damages.[1] As detailed by the Court of Appeals in its statement of the case, Respondents sought judgment on the pleadings, pointing out, *inter alia*, that ERISA's exclusive civil enforcement scheme does not allow for the extra-contractual damages sought by Petitioner. Pet. App. at A7. In her responsive pleadings, as the Court of Appeals noted, Petitioner "conceded [Inter-City's] . . . point about the type of damages available under [ERISA]." *Id.*; *see also* Resp. App. at A3-4. Treating the motion as one for summary judgment, and based in part on Petitioner's prior concession, the District Court entered judgment for Respondents. Resp. App. at A8. The Court of Appeals affirmed, concluding that under this Court's precedent in *Mertens v. Hewitt Assocs.*, 508 U.S. 248 (1993), Petitioner's "claim for compensatory and punitive damages under [ERISA] § 1132(a)(3)(B)'s provisions for 'other appropriate equitable relief' is not viable as a matter of law." Pet. App. at A15. Thereafter, Petitioner requested a rehearing, contending for the first time—in the guise of a jurisdictional challenge—that Inter-City's LTD benefit plan was *not* subject to ERISA and further challenging the lower courts' characterizations of Respondents as ERISA fiduciaries. The Court of Appeals denied Petitioner's request. Pet. App. at A20.

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[1] Petitioner added Respondent Robert Henningsen as a defendant in this action.

REASONS FOR DENYING THE WRIT

Petitioner raises no question appropriate for this Court's review. Rather, dissatisfied with the result reached in the District Court and affirmed by the Court of Appeals, she seeks merely to re-litigate her claims before this Court in the context of certiorari. Although she attempts to cloak her dissatisfaction in terms of subject matter jurisdiction and attenuated distinctions between controlling precedents, at its core her Petition fails to identify any issue worthy of the writ she seeks. The jurisdictional question she alleges is nothing more than an effort—at this late stage of the case and after Petitioner herself invoked ERISA as the basis for her suit—to have the Court re-examine the factual conclusions that Inter-City's LTD arrangement is an ERISA-governed benefit plan and that Respondents acted as fiduciaries of that plan. To prevail, moreover, this challenge requires Petitioner to take the ironic position that her own ERISA claims are so devoid of merit as not to involve a legitimate federal controversy. Similarly, Petitioner's misplaced attempt to distinguish her case from this Court's ERISA precedent merely seeks to have the Court second-guess the application of that precedent to the factual record below. Finally, her newly-raised suggestion that the money damages she seeks can be reconciled with ERISA's remedial scheme of "appropriate equitable relief" comes not only too late in the case, but runs counter to this Court's decisions and well-settled principles of law. In short, Petitioner has failed to identify any compelling basis on which to grant the writ she seeks.

I. Petitioner's Challenge to Subject Matter Jurisdiction Inappropriately Attempts to Re-Litigate Threshold Factual Determinations by the Lower Courts and, in Any Event, Fails This Court's "Substantiality" Standard.

Throughout this case, Petitioner has specifically relied on ERISA as the basis for her claims, advancing alternative theories of liability under that federal statute before the District Court and Court of Appeals. Now, however, having seen each of her theories rejected, Petitioner has abruptly recanted her reliance

on ERISA and suggested for the first time that the lower courts lacked subject matter jurisdiction over her claims. Petition at 3-4. Through her sudden change of heart, Petitioner would have this Court wipe away the results not only of this case but also of her prior litigation, freeing her to bring a *third* attempt at the recovery that has eluded her thus far. In playground parlance, Petitioner seeks a "do-over."

Petitioner's "jurisdictional" challenge does not truly question the District Court's authority to hear ERISA claims. Rather, Petitioner questions whether the *facts* of this case support such a claim—challenging the premises that Inter-City's LTD benefit policy is an ERISA-governed plan and that Respondents are ERISA fiduciaries and instead suggesting that Inter-City's purchase of an insurance policy took it outside ERISA's scope.[2] As such, her challenge is not so much a question of jurisdiction as it is an attempt to have this Court re-litigate threshold factual issues properly resolved by the courts below. *See, e.g.,* Resp. App. at A11 (finding ERISA preemption in Petitioner's prior case because "Plaintiff's claims against the Defendant . . . clearly 'relate to' the benefit plan."); A4 (referring in the present case to "ERISA welfare benefit plans like Defendant's . . . plan").

Certiorari is rarely an appropriate means to review fact-bound determinations by the lower courts such as those challenged by Petitioner. *See General Talking Pictures Corp. v.*

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[2] Typical of Petitioner's arguments is her suggestion that "insurance companies cannot be a benefit plan or a trust established under the plan, unless the plan's primary purpose is to provide death benefits." Petition at 7-8. Rather than address ERISA's trust requirements or the fiduciary status of insurers, however, the authority cited for this proposition, 29 U.S.C. § 1144(b)(2)(A), deals with ERISA's preemption of state law. Similarly, Petitioner suggests that the state-law claims in her prior case should not have been dismissed because Respondents did not affirmatively state they were ERISA fiduciaries. Petition at 10. Not only is the time for any challenge to Respondents' fiduciary status long past, but the decisions upon which Petitioner relies—assuming they ever had any application here—were overruled *sub silentio* by this Court in *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987) (state-law claims for tortious breach of agreement or bad faith benefit denial are preempted by ERISA where they "relate to" a covered benefit plan).

Western Elec. Co., 304 U.S. 175, 178 (1938) ("Granting of the writ would not be warranted merely to review the evidence or inferences drawn from it."); Sup. Ct. R. 10 (writ "is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law"). This is particularly true where, as here, the fact determinations are consistent with well-settled law.[3] *See, e.g., Donovan v. Dillingham*, 688 F.2d 1367, 1373 (11th Cir. 1982) ("the purchase of a group policy . . . covering a class of employees offers substantial evidence that a plan, fund, or program has been established"); *see also Kidder v. H & B Marine, Inc.*, 932 F.2d 347, 352-53 (5th Cir. 1991) (per curiam) (narrowly restricting ERISA exception, relied upon by Petitioner, for certain group insurance arrangements); 29 U.S.C. § 1103(b) (excluding insured ERISA welfare benefit plans like Inter-City's from trust requirements); *cf.* 29 C.F.R. § 2510.3-1(j) (1998) (describing limited circumstances, not applicable here, in which certain insurance arrangements fall outside ERISA's application). To depart from that standard here would allow Petitioner, through her "jurisdictional" challenge, to re-open not only the lower courts' fact determinations in this case but also the unappealed and now-final ruling of ERISA preemption by the District Court in Petitioner's original, dismissed case.

Moreover, even if Petitioner legitimately raised a question of subject matter jurisdiction, her argument would fail under this Court's long-standing test of "substantiality." In essence, Petitioner suggests that, although she pled claims exclusively under ERISA, the facts as she now understands them will not support

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[3] By its terms, ERISA governs "any employee benefit plan if it is established or maintained . . . by any employer engaged in commerce or in any industry or activity affecting commerce . . . ." ERISA § 4(a); 29 U.S.C. § 1003(a). Covered plans include "any plan, fund or program . . . established or maintained by an employer . . . to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, *through the purchase of insurance or otherwise*, . . . benefits in the event of . . . disability . . . ." ERISA § 3(1); 29 U.S.C. § 1002(1) (emphasis added).

her recovery under that statute. As Justice Holmes noted, however, it is well-settled that "when the plaintiff bases his cause of action upon an act of Congress, jurisdiction cannot be defeated by a plea denying the merits of the claim." *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913). Rather, in cases involving federal statutes, "[j]urisdiction is authority to decide the case either way." *Id.* Thus, as recently reaffirmed by this Court, subject matter jurisdiction exists over federal claims unless those claims cannot be said to raise a substantial issue under federal law:

> It is firmly established in our cases that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction .... As we stated in *Bell v. Hood*, 327 U.S. 678, 682, 66 S. Ct. 773, 776, 90 L. Ed. 939 (1946), "[j]urisdiction ... is not defeated ... by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover." Rather, the District Court has jurisdiction if "the right of petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another," ... unless the claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous." ... *Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy."*

Steel Co. v. Citizens for a Better Environment, 118 S. Ct. 1003, 1010 (1998) (internal citations omitted) (emphasis added).

As a matter of logic, this substantiality standard must apply with at least equal force where it is the party asserting the federal

claim who impugns its viability. Thus, Petitioner's "jurisdictional" argument places her in the awkward position of suggesting that her own claims under ERISA were, upon reflection, "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit" as to now warrant dismissal for absence of a legitimate federal controversy. This attempt to escape an unfavorable outcome in her case is precluded, however, by the fact that Petitioner not only chose to plead exclusively claims under ERISA, Pet. App. at 2, but also "put forward a cognizable . . . interpretation of [the statute] to support her position." Pet. App. at A17. As this Court noted in refusing to consider a similar, after-the-fact challenge to subject matter jurisdiction:

> Were it in truth a contention that the District Court lacked jurisdiction, we would be obliged to consider it, even as we are obliged to inquire *sua sponte* whenever a doubt arises as to the existence of federal jurisdiction. . . . However, . . . jurisdiction is sufficiently established by allegation of a claim under the Constitution or federal statutes, unless it "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction . . . ." The claim . . . is not so patently without merit as to fail [this] test . . . . Therefore, the question as to whether the respondent stated a claim for relief . . . is not of the jurisdictional sort which the Court raises on its own motion.

Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 278-79 (1977) (internal citations omitted), *superseded on other grounds by statute as stated in Rivera v. United States*, 924 F.2d 948 (9th Cir. 1991).

II. Petitioner Offers No Compelling Reason to Review the Application of this Court's Prior Decisions That "Appropriate Equitable Relief" Under ERISA Section 502(a)(3) Does Not Include Recovery of Money Damages.

As an alternative to her jurisdictional challenge, Petitioner suggests that the Court of Appeals misapplied this Court's construction of the remedies authorized under ERISA Section 502(a)(3). Specifically, Petitioner contends that, if Respondents are ERISA fiduciaries, her case is distinguishable from this Court's prior holding that recovery under Section 502(a)(3) is limited to traditionally equitable relief which excludes money damages. Petition at 11-13. Like her attempt to re-litigate the status of Inter-City's LTD plan under ERISA, an effort to revisit the facts underlying Respondents' fiduciary status at this stage of the case does not provide a compelling basis for the writ Petitioner seeks. *See supra* at 4-5. More importantly, however, Petitioner's perceived distinction between fiduciaries and nonfiduciaries for purposes of the relief she seeks is misplaced. As the Court of Appeals correctly observed, Petitioner's sole potential remedy for alleged breach of Respondents' duties of prudence and loyalty under ERISA Sections 404 and 406, 29 U.S.C. §§ 1104(a)(1), 1106(b)(2), is under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3). Pet. App. at A13-14. In applying Section 502(a)(3) to Petitioner's claims, however, the Court of Appeals noted that this Court has limited the forms of relief authorized to exclude money damages:

> *Mertens* specifically held that § 1132(a)(3)'s reference to "equitable relief" was limited to the "remedy traditionally viewed as 'equitable,' such as injunction or restitution." Because money damages are "the classic form of *legal* relief," § 1132(a)(3) does not authorize suits for compensatory, much less punitive, damages.

Allinder, 152 F.3d at 552, Pet. App. at A16 (quoting *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993)) (internal citations omitted).

Petitioner challenges this straight-forward application of controlling precedent on the basis that *Mertens* involved a Section 502(a)(3) claim not against a fiduciary but rather against a nonfiduciary who knowingly participated in a fiduciary's breach of its ERISA duties. Yet nothing in *Mertens* distinguishes, for purposes of the relief available under Section 502(a)(3), between a fiduciary and a nonfiduciary who knowingly participates in the former's breach.[4] Rather, *Mertens* simply makes clear that the term "appropriate equitable relief" serves to limit the remedies available under Section 502(a)(3), 508 U.S. at 257-58, and that, consistent with this limitation on available remedies, fiduciaries as well as nonfiduciaries, "assuming [they] can be sued under § 502(a)(3), may be enjoined from participating in a [fiduciary] breach, compelled to make restitution, and subjected to other equitable decrees." *Id.* at 262; *see also Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 53 (1987) ("Under the civil enforcement provisions of § 502(a) . . . [r]elief may take the form of accrued benefits due, a declaratory judgment on entitlement to benefits, or an injunction against a plan administrator's improper refusal to pay benefits.").

Not only has Petitioner failed to articulate a rationale for why the distinction she proposes between fiduciaries and participating nonfiduciaries would have impacted the Court of Appeal's application of *Mertens*, but she has failed as well to reconcile the proposed distinction with this Court's subsequent decision in *Varity Corp. v. Howe*, 516 U.S. 489 (1996). There, the Court expressly dealt with an employer acting in the capacity of plan administrator and fiduciary. *Id.* at 501-03. In concluding that individual beneficiaries and participants could pursue recovery under Section 502(a)(3) for fiduciary breaches, the Court reaffirmed that such recovery is limited to "appropriate equitable relief." *Id.* at 515 (citing, *inter alia*, *Mertens*, 508 U.S. at

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[4] Indeed, the Court noted that, for purposes of its decision, it had accepted the parties' assumption that ERISA Section 502(a)(3) applied equally to fiduciaries and nonfiduciaries who knowingly participate in their breach, despite "the oddity of resolving a dispute over remedies where it is unclear that a remediable wrong has been alleged . . . ." *Mertens*, 508 U.S. at 254.

263-64). Thus, even if the Court of Appeals had considered Petitioner's proposed distinction, it would have undoubtedly reached the same conclusion: that "legal" remedies such as money damages are not among the forms of relief available under ERISA Section 503(a)(3). Accordingly, no compelling reason exists for this Court to revisit the issue.

III. Petitioner's Recharacterization of the Relief She Seeks as "Restitution," Which She Failed to Properly Raise Below, Is Contrary to Both Her Own Prior Position in this Case and Well-Settled Principles of Law.

Perhaps in recognition that the relief she sought below—compensatory and punitive damages—falls beyond the remedies authorized by the plain language of ERISA Section 502(a)(3) and this Court's decisions under that provision, Petitioner now contends that portions of the remedy she seeks are, in fact, equitable in nature. Specifically, Petitioner contends that recovery of fees paid to her attorney and interest on the LTD benefits she eventually received should be viewed as an equitable remedy in the nature of "restitution." Petition at 13-14. This contention was never raised in the District Court, and accordingly was not considered by the Court of Appeals. *Singleton v. Wulff*, 428 U.S. 106, 120 (1976) ("It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below."). Thus, the issue is inappropriate for discretionary review by this Court. *See Walters v. City of St. Louis, Mo.*, 347 U.S. 231, 233 (1954) ("Of course, we will not undertake to review what the court below did not decide.").

Moreover, Petitioner's argument would require this Court to ignore her concession in the District Court, in response to Respondents' motion for judgment on the pleadings, that Section 502(a)(3) does not authorize recovery of "extra-contractual" damages, *i.e.*, those beyond her actual benefits under the LTD plan. Pet. App. at A7; Resp. App. at A3-4. As one appellate court has observed, "a plaintiff in his opposition to a motion for summary judgment cannot abandon an issue and then, after an unpalatable decision by the trial judge, on appeal, by drawing on the pleadings resurrect the abandoned issue."

Edward B. Marks Music Corp. v. Continental Record Co., 222 F.2d 488, 492 (2d Cir. 1955). By the same reasoning, certiorari is hardly the appropriate context to "resurrect" Petitioner's "abandoned issue" that monetary relief beyond actual plan benefits is available under ERISA Section 502(a)(3).

Finally, Petitioner's contention does not present a compelling issue calling for this Court's resolution. To the contrary, despite the label of "restitution," the recovery Petitioner seeks is, in essence, an award of money in addition to her benefits under the plan to compensate her for alleged losses associated with her initial benefit denial.[5] In contrast to the relief Petitioner seeks, the traditional remedy of restitution involves a return of improperly received benefit or profit. Thus, true restitution is appropriate "only to the extent that [the claimant] has conferred a benefit on [the defendant] by way of part performance or reliance." Restatement (Second) of Contracts § 370 (1979). Here, however, neither the record nor Petitioner's newly-raised argument identifies any unjust enrichment to Respondents at Petitioner's expense. Accordingly, in the absence of some unfair benefit derived by Respondents, there is nothing to be returned to Petitioner in the form of restitution. Restatement of Restitution § 1 (1936).[6] Rather, Petitioner's contention is nothing more than an effort to shoe-horn her request for extra-contractual money damages into ERISA Section 502(a)(3)'s language authorizing "appropriate equitable relief." Rejecting a similar effort in *Mertens*, this Court observed:

> Although they often dance around the word, what petitioners in fact seek is nothing other than compensatory damages—monetary relief for . . . losses . . . sustained as a result of the alleged breach of fiduciary

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[5] This is necessarily so, since Petitioner has admitted that she received her full disability benefits. Pet. App. at A13.

[6] *See also Mertens v. Hewitt Assocs.*, 948 F.2d 607, 612 (9th Cir. 1991) (restitution barred under ERISA by failure to allege unjust enrichment and failure of plaintiff to have conferred a benefit upon defendant), *aff'd*, 508 U.S. 248 (1993); *First Nat'l Life Ins. Co. v. Sunshine-Jr. Food Stores, Inc.*, 960 F.2d 1546, 1553 (11th Cir. 1992) (denying restitution under ERISA where employer received no unjust enrichment).

> duties. Money damages are, of course, the classic form of *legal* relief.

508 U.S. at 255. Accordingly, Petitioner's newly-conceived attempt to characterize her alleged damages as restitution cannot justify the writ she seeks.

CONCLUSION

Petitioner has identified no disagreement among the lower courts, departure from this Court's prior decisions, or similar compelling justification for the writ she seeks. Rather, her Petition is founded upon strained challenges to fundamental fact determinations by the lower courts in applying well-settled law and tenuous distinctions—in many cases contrary to her position below or raised for the first time only on review—offered in an effort to escape the controlling results of this Court's prior decisions. Despite such contentions, however, Petitioner has not demonstrated that her claims were not fully considered and correctly decided on the merits below, much less that the case presents compelling issues of such broad application and jurisprudential significance as to require the Court to settle "an important question of federal law." Sup. Ct. R. 10. For the foregoing reasons, Respondents respectfully request that the Petition for Writ of Certiorari be denied.

DATED: January 28, 1999

Respectfully submitted,

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CORPORATION (USA)
and ROBERT HENNINGSEN

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

LINDA ALLINDER	)	
	)	
v.	)	No. 3:96-0834
	)	
INTER-CITY PRODUCTS CORP. (USA), ET AL.	)	

MEMORANDUM

Pending before the Court is Defendant's Motion for Judgment on the Pleadings, filed on October 3, 1996. (Doc. No. 5). Upon review of the record, and for the reasons stated below, the Court grants the Motion and dismisses the above-captioned matter.

I. BACKGROUND

Plaintiff Linda Allinder, a former employee of Defendant Inter-City, originally brought this matter in January of 1996 as an action in state court. Plaintiff charged Inter-City with refusing to complete and process forms required for Allinder to obtain insurance benefits after Allinder suffered a toxic reaction to pesticides used in her workplace. Defendant removed the case to federal court in March of 1996, on the grounds that the Plaintiff's claims were "all actions founded upon or preempted by the laws of the United States, specifically, the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001-1461. (1982)."

Plaintiff next filed a Motion for an Order Remanding the Action to State Court, arguing that the action did not emcompass any federal claims that would require the District Court to maintain jurisdiction. Allinder argued that the case be remanded on the grounds that state law predominately governed the circumstances as alleged, since tortious interference with contractual rights, misrepresentation, and conversion are "well founded State common law causes of action."

The Court denied Plaintiff's Motion to Remand and entered Summary Judgment on the grounds that Plaintiff's state law claims were preempted by federal law under ERISA. Plaintiff had failed to state a claim on which relief could be granted, since Plaintiff's state law claims were preempted by ERISA. Thus, this Court dismissed the case without prejudice in August of 1996.

Plaintiff refiled the action in Federal Court in September of 1996, alleging an ERISA violation arising from defendant Inter-City and Defendant Henningsen's interference with her claim processing by failing to complete forms necessary for Plaintiff's filing of a long term disability insurance claim.

II. DISCUSSION

A. Standard of Review.

Initially, the motion was filed as a Motion for Judgment on the Pleadings. The standard for such a motion requires that a complaint may be dismissed only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Defendant maintains that since Plaintiff has filed a Response to Defendant's Motion for Judgment on the Pleadings, together with a Memorandum and an Affidavit, Plaintiff has effectively transformed Defendants' motion for judgment on the pleadings into a motion for summary judgment. FRCP Rule 12 states, "If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Thus, this Court will evaluate Defendants' Motion for Judgment on the Pleadings as a Motion for Summary Judgment.

Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). In ascertaining whether summary judgment is proper, the Court views the facts and any reasonable inferences drawn from those

facts in a light most favorable to the non-moving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). However, on its own, the existence of a colorable factual dispute will not defeat a properly supported motion for summary judgment. A genuine dispute between the parties on an issue of material fact must exist to render summary judgment inappropriate. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-49 (1986) (internal citations omitted). In order to survive a motion for summary judgment, the Plaintiff must produce more than a scintilla of evidence. The Supreme Court, in *Anderson v. Liberty Lobby* stated that "[t]the mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. *Anderson*, 477 U.S. at 248, 252; *see also Street v. J.C. Bradford & Co.*, 886 F. 2d 1472, 1479 (6th Cir. 1989), *reh'g denied* 1990.

In construing the evidence in its most favorable light in favor of Plaintiff and against Defendants, as required under *Bohn Aluminum & Brass Corp. v. Storm King Corp.*, 303 F.2d 425, 427 (6th Cir. 1962), the Court finds that there does not exist a genuine issue of material fact with respect to the question of the viability of Plaintiff's claims. Thus, after a careful review of the record, the Court, in this instance, believes summary judgment to be appropriate.

B. The availability of compensatory, punitive, or extra contractual damages:

Defendant alleges that Plaintiff has failed to state a claim for which relief may be granted because the tort claims she alleges are not included in ERISA's exclusive civil enforcement scheme. In Plaintiff's Amended complaint, she states only causes of action under ERISA. Plaintiff's complaint prays that this Court award her $300,000 in compensatory damages and $300,000 in punitive damages. However, Defendants' in their Motion for Judgment on the Pleadings, argued that since ERISA's civil enforcement scheme does not provide for causes of

action in tort, Plaintiff has failed to state a cause of action on which relief may be granted.

Plaintiff concedes in her Response to Defendant's Motion for Judgment on the Pleadings (Doc. No. 9) that ERISA does not provide compensatory, punitive, or extracontractual damages to redress Plaintiff's asserted claims. However, she maintains that she has shown sufficient facts in the complaint to establish a claim for relief under 29 U.S.C. Section 1132 and for Defendants' breach of their fiduciary duties towards Plaintiff.

C. Did Defendants violate ERISA when they failed to process Plaintiff's disability insurance forms?

Plaintiff contends that Defendants violated ERISA at 29 USCS 1132(c) by failing to fill out the employer portion of Plaintiff's long term disability form. Additionally, Plaintiff maintains that Defendants violated ERISA at 29 USCS 1104(a)(1) and 1106(b)(2) in its failure to meet its duties as a plan fiduciary. The Court will examine each of these arguments in turn.

29 USCS 1132(c) provides that:

> Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this sub chapter to furnish to a participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount up to $100.00 a day from the day of such failure or refusal, and the court may at its discretion order such relief as it deems proper.

ERISA at 29 USC 1024(b)(4) requires plan administrators to provide the following information to the participants of ERISA welfare benefit plans, like Defendant's ICP plan: (1) a summary plan description; (2) annual report; (3) a summary description of plan modifications; and (4) upon written request by the participant, a copy of any collective bargaining agreement, trust agreement, contract or other instruments under which the plan is established or operated.

Plaintiff argues that "the request by the Plaintiff that the Defendant fill out their portion of the Long Term disability form is certainly a request for an instrument under which the plan is operated. The form is the mechanism by which benefits are requested for the participant. At the top of one side of the form are the instructions, "TO BE COMPLETED BY THE EMPLOYER." Plaintiff's Memorandum, p. 3. Additionally, the disability insurance policy states, "The Insurance Company will deal solely with the policyholder who will be deemed the representative of each employee." An amendment to the policy states, "The name of the Policyholder is changed to Inter-City Products Corporation." Thirdly, according to Plaintiff, the insurance company informed Plaintiff originally, verbally, and later in a January 20, 1994 letter, that before they could process her claim, her employer must fill out his side of the form.

Defendant contends that in order to establish a violation of 29 USC 1132(c), Plaintiff must show (1) that the plan administrator was required by ERISA to make available to the participant the information she requested, and (2) that the participant requested in writing, and the administrator failed or refused to provide the information. *Kleinhans v. Lisle Sav. Profit Sharing Trust*, 810 F.2d 618, 622 (7th Cir. 1987). On this basis, Defendants argue that the plan administrator's conduct and intent have no bearing on the court's determination whether its discretionary power to award a penalty under 29 USC 1132(c) has been triggered.

Additionally, Defendant argues that claim forms are not instruments under which the Plan is operated under ERISA section 502(c). According to Defendant, every court which has considered Plaintiff's argument that claim forms and the employment information requested on Plaintiff's form are "instruments under which a plan is operated" under 29 USC 1024 (b)(4), has, in each and every case, held in opposition to Plaintiff's position, finding instead that such forms are not within the scope of ERISA section 502(c).

The Court, having reviewed the caselaw on the question as to whether claim forms or Plaintiff's requested employment information constitute "instruments under which a plan is operated" under 29 USC 1024(b)(4), conclude that the majority of the authority supports Defendant's position. *See, e.g., Wesley v. Monsanto Co.*, 554 F. Supp. 93, 98 (E.D. Mo. 1982), *affirmed*, 710 F.2d 490 (8th Cir. 1983) (stating that claim forms are not among the documents specified in the statute); *Arsenault v. Bell*, 724 F. Supp. 1064, 1066 (D. Mass 1989) ("A plan participant may not invoke section (c) to collect penalties from an administrator who fails to supply the forms"). The Sixth Circuit has not ruled upon the issue explicitly, but has noted that "there is some question as to whether claim forms are even covered under ERISA's document production requirements." *Osimowicz v. Ford Motor Co.*, 9 F. 3d 109, n. 4 (6th Cir. 1993). Defendant argues as well that ERISA 502(c) does not require Defendants to provide employment records to Plaintiff. *See, e.g., Vernon v. C.K. Systematics, Inc.*, 1987 WL 5276, at 6 (E.D. Pa. 1987) (noting that it is extremely doubtful that ERISA plan administrators are required to supply such information). Thus, the Court rejects Plaintiff's argument that Defendants' conduct violated ERISA at USCS 1132(c).

Plaintiff additionally argues in support of her claim that Defendants violated ERISA at 29 USCS 1104(a)(1) and 1106(b)(2) in its failure to meet its duties as a plan fiduciary. Plaintiff cites a Supreme Court holding indicating that not all powers and duties of trustees and their fiduciaries are explicitly enumerated; rather, the general scope of authority and responsibility is defined by the common law of trust, under which trustees are understood to have all powers necessary or appropriate for carrying out the purposes of the trust. *Central States, Southeast and Southwest Areas Pension Fund v. Central Transport. Inc.* 472 U.S. 559, 568-574 (1985). According to Plaintiff, ERISA 29 USCS 1104(a)(1) and 1106(b)(2) impose upon fiduciaries of employee benefit plans duties of loyalty and prudence. These statutory provisions, according to Plaintiff, indicate that a fiduciary shall not "in his individual or any other capacity act in any

transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interest of the plan or the interest of the beneficiaries." *Evans v. Bexley*, 750 F.2d 1498, 1499 (11th Cir. 1985). Fiduciary standards of ERISA, contends Plaintiff, must be enforced with uncompromising rigidity. *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 302 (7th Cir. 1985). Trustees must act for the exclusive purposes of providing benefits for participants and their beneficiaries, and defraying reasonable expenses of administration within the trust. *Clark v. Washington Teamsters Welfare Trust*, 8 F.3d 1429, 1432 (9th Cir. 1993). Fiduciary duties articulated in 29 USCS 1104 are not exhaustive, rather, Congress relied upon common law trust to define the general scope of the trustees' and other fiduciaries' authority and responsibility. *Bixler v. Central Pennsylvania Teamsters Health & Welfare Fund* 12 F.3d 1292, 1299 (3rd Cir. 1993).

Unfortunately for Plaintiff, the Sixth Circuit has been explicit in its rejection of claims brought by individual plan participants claiming the breach of a fiduciary duty by a plan administrator. As the Court in *Tassinare v. American Nat. Ins. Co.* states,

> It is well-settled that fiduciary liability under ERISA arises in favor of the plan itself, and that plan participants may not seek to recover in an individual capacity. *See Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 140-44, 105 S.Ct. 3085, 3089-91, 87 L.Ed.2d 96 (1985); *Tregoning v. American Community Mut. Ins. Co.*, 12 F.3d 79, 83 (6th Cir. 1993), *cert denied*, 511 U.S. 1082, 114 S.Ct. 1832, 128 L.Ed. 2d 461 (1994).

Tassinare, 32 F.3d 220, 222 (6th Cir. 1994). Additionally, the *Tassinare* court continued in a footnote that:

> *Tregoning* and *Russell* both clearly explain that the agents have no right, as individual plan participants, to maintain a fiduciary claim for their personal benefit. *See Tregoning*, 12 F.3d at 83 ("the liability of a fiduciary is to reimburse the plan, not the individual participants")(citing *Russell*, 473 U.S. at 140, 105 S.Ct. at 3089).

Tassinare, 32 F.3d at 223, no. 3. Thus, despite this Court's sympathy for any harm Plaintiff may have suffered if Defendants' alleged misrepresentation did take place, the Court must follow the dictate of Sixth Circuit precedent and reject Plaintiff's attempts to recover from Defendants for breach of fiduciary duty.

Since the Court finds, as a matter of law, that Plaintiff fails to state a claim upon which relief can be granted, it will not be necessary to address the issue as to whether Plaintiff's claims are time-barred under ERISA.

III. CONCLUSION

For the foregoing reasons, the Court hereby grants Defendants' Motion for Judgment on the Pleadings/ Summary Judgment and dismisses the above-captioned matter. An Order consistent with the reasoning set forth above is filed contemporaneously.

Entered this the 10th day of June, 1997.

/s/ John T. Nixon

JOHN T. NIXON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

LINDA ALLINDER

v. } **No. 3-96-0272**

INTER-CITY PRODUCTS CORPORATION (USA)

MEMORANDUM

Plaintiff Linda Allinder's Motion for an Order Remanding an Action to State Court (Doc. No. 5) filed on April 17, 1996, to which Defendant Inter-City Products Corporation (USA) ("Inter-City") filed a Memorandum in Opposition (Doc. No. 7) on April 26, 1996. Also pending before this Court is Defendant's Motion for Summary Judgement (Doc. No. 8), filed on April 26, 1996 to which Plaintiff Linda Allinder has filed a Response (Doc. No. 13) on May 20, 1996.

Upon review of the record and for the reasons stated below, the Court hereby denies Plaintiff's Motion for an Order Remanding Action to State Court and grants Defendant's Motion for Summary Judgement.

I. BACKGROUND

Plaintiff Linda Allinder, a former employee of Defendant Inter-City, originally brought this matter in January of 1996 as an action in state court. Allinder charged Inter-City with refusing to complete and process forms required for Allinder to obtain insurance benefits after Allinder suffered a toxic reaction to pesticides used in her workplace. Defendant removed the case to federal court in March of 1996, on the grounds that the Plaintiff's claims were "all actions founded upon or preempted by the laws of the United States, specifically, the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001-1461. (1982).

Plaintiff next filed a Motion for an Order Remanding the Action to State Court, arguing that the action did not encompass any federal claims that would require the District Court to maintain jurisdiction. Plaintiff states that the essence of her cause of action is that the Defendant and its agents tortiously interfered with Allinder's contractual right to have her insurance claims completed and processed. Further, Plaintiff maintains that one of the Defendant's agents intentionally misrepresented the interpretation of the Plaintiff's disability policy in order to deprive Plaintiff of her benefits. Thus, Allinder argues that the case be remanded on the grounds that state law predominately governs the circumstances as alleged, since tortious interference with contractual rights, misrepresentation, and conversion are "well founded State common law causes of action."

Defendant Inter-City opposes Plaintiff's Motion to Remand and requests this Court to enter Summary Judgement on the grounds that Plaintiff's state law claims are preempted by federal law under ERISA. Defendant argues that the Plaintiff has failed to state a claim on which relief can be granted, given that all of the Plaintiff's state law claims are preempted by ERISA.

II. DISCUSSION

A. The Purpose and Scope of ERISA

ERISA is a remedial statute designed to protect the interests of employees in pension and welfare plans. *see Shaw v. Delta Airlines*, 463 U.S. 85, 103 S.Ct. 2890, 2896, 77 L.Ed.2d 490 (1983). Under ERISA §3(1), 29 U.S.C. § 1002(1), a "welfare plan" is:

> (1) a "plan, fund or program" (2) established or maintained (3) by an employer or by an employee organization, or by both, (4) for the purpose of providing medical, surgical, hospital care, sickness, accident, disability, death, unemployment or vacation benefits, apprenticeship or other training programs, day care

centers, scholarship funds, prepaid legal services or severance benefit (5) to the participants or their beneficiaries.

Donovan v. Dillinham, 688 F.2d 1367, 1371 (11th Cir., 1982). In addition to protecting employees, ERISA was also set up to protect employers from conflicting and inconsistent state and local regulation of such plans, *see Shaw*, 463 U.S. at 86, 103 S.Ct. at 2894. The former purpose is achieved through requirements for reporting, disclosure, participation rights, vesting of rights to benefits, funding fiduciary responsibilities, and claims procedures. *See* 29 U.S.C. § 1021-1145. The latter purpose is achieved through the preemption, with a few exceptions not relevant here, of all state laws relating to employee pension and welfare benefit plans. *See id.* § 1144.

Since ERISA was enacted to replace a patchwork scheme of state regulation of employee benefit plans with a uniform set of federal regulations, the preemptive clause of ERISA "is conspicuous for its breadth." *FMC Corp. v. Holliday*, 498 U.S. 52, 56-60, 111 S.Ct. 403, 406-409, 112 L.Ed.2d 356 (1990). ERISA preempts all state laws that "relate to" employee benefit plans, whether or not the state laws are designed to affect employee benefit plans. *Id.* at 58, 111 s.Ct. at 407-08. *See also* 29 U.s.C. § 1144(a). Thus, in the case at bar, it is necessary to determine if the state laws under which Plaintiff brings her claims against Inter-City "relate to" the Defendant's benefit plan covering employees' long term disabilities.

B. Plaintiff's State Law Claims are Preempted by ERISA.

Plaintiff's state law claims include tortious interference with contractual rights, intentional misrepresentation, and conversion. These claims all arise from Inter-City's refusal to accept documentation required to process Plaintiff's claim for long term disability benefits under a group long term disability plan maintained by the Defendant and funded through a group insurance policy issued by Life Insurance of North America. Plaintiff's claims against the Defendant, therefore, clearly "relate to" the benefit plan. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 48,

107 S.Ct. 1549, 1553, 95 L.Ed.2d 39 (1987)("The common law causes of action [tortious breach of contract, breach of fiduciary duties, and fraud in the inducement] raised in [plaintiff's] complaint, each based on alleged improper processing of a claim for benefits under an employee benefit plan, undoubtedly meet the criteria for pre-emption....").

Plaintiff attempts to distinguish her case from *Pilot Life* by asserting that (1) Plaintiff never had the opportunity to receive disability benefits; (2) Plaintiff brings her claim against an employer rather than an insurance carrier; and (3) Defendant's actions do not constitute "improper processing of a claim for benefits," but rather a refusal to accept from Plaintiff the necessary documentation required to process her claim.

However, a plaintiff need not have had the opportunity to receive benefits in order for her claim connected with those benefits fall within the ambit of ERISA preemption. *See, e.g. Corcoran v. United Healthcare, Inc.*, 965 F.2d 1321 (5th Cir., 1992), *cert. denied*, 506 U.S. 1033, 113 S.Ct. 812, 121 L.Ed.2d 684 (1992) (stating that state tort claims of ERISA plan-participant who did not receive certain benefits because a utilization review organization denied the plaintiff authorization for hospitalization under the plan were preempted by ERISA).

Further, the fact that Plaintiff's claims are against her employer does not save Plaintiff's claim from preemption. *See Metropolitan Life Ins. Co. v. Taylor,* 481 U.S. 58, 62, 107 S.Ct. 1542, 1546, 95 L.Ed.2d 55 (1987) (holding that Plaintiff's state common law contract and tort claims against both employer and insurance company for decision to discontinue disability benefits were preempted by ERISA); *Moffit v. Whittle Communications L.P.*, 895 F.Supp. 961, 971-72 (E.D. Tenn., 1995) (indicating that dispute between employee and employer concerning employer's misrepresentation of disability benefits plan is governed by ERISA rather than Tennessee state law).

Finally, courts have indicated that if the actions of a non-insurer nonetheless determine the availability of benefits under an ERISA benefits plan, it can constitute "a means of processing

claims" which therefore falls within the scope of ERISA. *Tolton v. American Biodyne, Inc.*, 48 F.3d 937, 942 (6th Cir., 1995). In the case at bar, the actions of the Defendant determined the availability to the Plaintiff of her long-term disability benefits. Therefore, the Defendants' acts can be deemed to be "processing claims" for purposes of ERISA.

Thus, the Court holds that all of the Plaintiff's claims are governed by federal law as they fall within the preemptive ambit of ERISA.

III. CONCLUSION

After reviewing the record, this Court finds that each of the claims raised by the Plaintiff are preempted by ERISA and the Plaintiff has failed to state a claim on which relief could be granted. For this reason, the Court DENIES Plaintiff's Motion for an Order Remanding Action to State Court and GRANTS Defendant's Motion for Summary Judgement. The dismissal of this action is without prejudice to such rights as Plaintiff may have under ERISA.

An order consistent with these findings is filed contemporaneously.

Entered this 28th day of June, 1996.

/s/ JOHN T. NIXON

JOHN T. NIXON, CHIEF JUDGE
UNITED STATES DISTRICT
COURT